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JOHN P WHITE
COOPER & DUNHAM LLP
1185 AVENUE OF THE AMERICAS
NEW YORK NY 10036

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OFFICE OF PETITIONS

In re Application of
Stein, et al.
Application No. 09/753,169
Filed: January 2, 2001
Attorney Docket No.
55669-A-PCT-US/JPW/GJC

DECISION ON PETITION

This is a decision on the petition filed March 13, 2002, pursuant to 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to properly reply to the Notice to File Missing Parts of Nonprovisional Application, mailed March 7, 2001. This Notice set a period for reply of two months from the mail date of the Notice to submit: (1) an executed oath or declaration (and the surcharge for its late filing); (2) a copy of the "Sequence Listing" in computer readable form as required by 37 CFR 1.821(e), and (3) a statement that the contents of the sequence listing information recorded in computer readable format is identical to the written sequence listing. On September 28, 2001, petitioner submitted an executed declaration, together with the surcharge for its late filing. However, as petitioner did not submit items (2) or (3) above, the application became abandoned on October 8, 2001. A Notice of Incomplete Reply was mailed on November 28, 2001. The mailing of this decision precedes the mailing of a Notice of Abandonment.

With the instant petition, petitioner submitted the required items as set forth in the Notice of Incomplete Reply, paid the \$640 petition fee, and made the proper statement of unintentional delay.

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the \$915 extension of time fee submitted with the petition on March 13, 2002 was subsequent to the maximum period obtainable for reply (October 7, 2001), this fee has been refunded to Deposit Account No 03-3125. In addition, as the \$65 surcharge for late filing of the declaration was already submitted on September 28, 2001, the \$65 submitted on March 13, 2002 has also been refunded to petitioner's deposit account.

The application file is being forwarded to the Office of Initial Patent Examination for completion of pre-examination processing.

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-0272.

Cliff Congo
Cliff Congo
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹ This filing was made timely by obtaining a five month extension of time.